

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

AMOS BEVERETT,
Petitioner.

No. 2 CA-CR 2018-0273-PR
Filed November 28, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20091782001
The Honorable Danelle B. Liwski, Judge

REVIEW GRANTED; RELIEF DENIED

Amos Beverett, San Luis
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

ESPINOSA, Judge:

¶1 Amos Beverett seeks review of the trial court's order summarily denying his successive and untimely request for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Beverett has not shown such abuse here.

¶2 After a jury trial, Beverett was convicted of three counts of sale or transfer of a narcotic drug and sentenced to concurrent prison terms of 15.75 years for each offense. We affirmed his convictions and sentences on appeal. *State v. Beverett*, No. 2 CA-CR 2010-0397 (Ariz. App. Dec. 14, 2011) (mem. decision). Beverett has previously sought and been denied post-conviction relief on several occasions, and this court has denied relief on review. *State v. Beverett*, No. 2 CA-CR 2016-0360-PR (Ariz. App. Jan. 10, 2017) (mem. decision); *State v. Beverett*, No. 2 CA-CR 2013-0245-PR (Ariz. App. Oct. 22, 2013) (mem. decision); *State v. Beverett*, No. 2 CA-CR 2012-0419-PR (Ariz. App. Feb. 21, 2013) (mem. decision).

¶3 In his most recent proceeding, Beverett has raised what he describes as a claim of newly discovered evidence pursuant to Rule 32.1(e), asserting he only recently discovered that his trial counsel had failed to inform him of a plea offer by the state. The trial court summarily dismissed his notice of post-conviction relief, but, on review, we determined Beverett had complied with Rule 32.2(b) and was entitled to file a petition.¹ *State v. Beverett*, No. 2 CA-CR 2017-0159, ¶¶ 11, 13 (Ariz. App. Nov. 28, 2017) (suppl. decision on recons.).

¹Beverett identified other claims in his notice of post-conviction relief, but we determined the trial court correctly rejected them. *State v. Beverett*, No. 2 CA-CR 2017-0159, ¶ 13 (Ariz. App. Nov. 28, 2017) (suppl. decision on recons.); *State v. Beverett*, No. 2 CA-CR 2017-0159, ¶ 16 (Ariz. App. Sept. 14, 2017) (mem. decision).

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¶4 On remand, Beverett filed a petition for post-conviction relief claiming there was newly discovered evidence that trial counsel had failed to advise him of a plea offer from the state. The trial court summarily denied relief, concluding “[t]he crux of the . . . claim is not a claim of newly discovered material evidence, but a claim that . . . he was deprived of his Sixth Amendment right to the effective assistance of counsel.” It additionally noted the plea agreement could not qualify as newly discovered evidence because it was known to counsel at the time of trial, citing *State v. Saenz*, 197 Ariz. 487, ¶ 13 (App. 2000). Thus, the court determined Beverett had not made a colorable claim pursuant to Rule 32.1(e) and his claim of ineffective assistance, which falls within Rule 32.1(a), was precluded as waived. This petition for review followed.

¶5 On review, Beverett summarily asserts his claim is a “textbook” claim of newly discovered evidence and, thus, “cannot be precluded.” Beverett is correct that a claim of newly discovered evidence pursuant to Rule 32.1(e) is normally not subject to preclusion and may be raised in an untimely proceeding like this one. See Ariz. R. Crim. P. 32.2(b), 32.4(a)(2)(A). Rule 32.1(e), however, does not apply because it does not contemplate a claim of newly discovered ineffective assistance of counsel, and is instead restricted to “newly discovered material facts . . . [that] probably would . . . change[] the verdict or sentence.” See *State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim). That counsel may have failed to disclose a plea offer from the state is not material to the facts underlying Beverett’s convictions or sentences. As the trial court correctly observed, a claim of ineffective assistance falls within Rule 32.1(a) and, as such, cannot be raised in an untimely proceeding. See Ariz. R. Crim. P. 32.4(a)(2)(A); *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (ineffective assistance claim raised under Rule 32.1(a)).

¶6 Beverett raises several other arguments, including that the trial court committed “malfeasance” in handling several filings and that his petition was therefore timely. Because Beverett has not identified a colorable claim that can be raised in this untimely post-conviction proceeding, we need not address this argument. See *State v. Henderson*, 210 Ariz. 561, n.2 (2005) (court generally will not address moot issues on review). Nor do we address Beverett’s claims, raised for the first time on review, that the state committed misconduct and his “autonomy” was constrained due to “the breakdown of communication between counsel and

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client.” *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (court will not address issues first raised on review).

¶7 Although we grant review, relief is denied.